

1 Rusty Graf, Esq.  
2 Nevada Bar No. 6322  
3 BLACK & LOBELLO  
4 10777 w. Twain Ave., Suite 300  
5 Las Vegas, Nevada 89135  
T: 702-869-8801  
F: 702-869-2669  
[rgraf@blacklobello.law](mailto:rgraf@blacklobello.law)  
6 Attorneys for BART'S ELECTRIC  
COMPANY, INC.

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9 **UNITED STATES DISTRICT COURT**  
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11 **FOR THE DISTRICT OF NEVADA**

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14 UNITED STATES OF AMERICA, for the Use  
15 and Benefit of BART'S ELECTRIC  
16 COMPANY, INC., *A Missouri Corporation*,

17 CASE NO.: 2:18-cv-02168

18 Plaintiff,

19 vs.

20  
21 UNITED EXCEL CORPORATION, *A Kansas*  
22 *Corporation*; LIBERTY MUTUAL  
23 INSURANCE COMPANY, *A Massachusetts*  
24 *Corporation*,

25 Defendants.

18 **PLAINTIFF'S UNOPPOSED MOTION FOR STAY OF PROCEEDINGS PENDING**

19 **CONCLUSION OF MEDIATION AND ARBITRATION**

20 Plaintiff, UNITED STATES OF AMERICA, for the Use and Benefit of BART'S  
21 ELECTRIC COMPANY, INC., a Missouri Corporation ("Bart's" and/or "Plaintiff"), by and  
22 through its counsel of record, BLACK & LOBELLO, hereby brings its Motion to Stay  
23 Proceedings pursuant to the Arbitration Clause contained within the Contract between and  
24 among the real parties in interest. See attached Exhibit "1".

25  
26 **I. INTRODUCTION AND FACTUAL BACKGROUND**

27 Defendant, United Excel Corporation ("UEC") is engaged in the business of providing  
28 construction services, including providing and performing construction services on federal

1 construction projects. On or about September 27, 2012, UEC was awarded a contract at Nellis Air  
2 Force Bank in Las Vegas, Nevada for the Medical Center Realignment (the “Project”) by the U.S.  
3 Army Corps of Engineers. (“USACE” or the “Owner”) in the total amount of \$70,971,960,  
4 identified as Contract No. W9126G-08-D-0055, Task Order No. CL-04 (the “Prime Contract”).  
5 See attached Exhibit 1. On or about January 14, 2013, Bart’s executed and entered into a written  
6 contract with UEC to act as a subcontractor on the Project for electrical work required by the Prime  
7 Contract. A true and accurate copy of the written and executed Subcontract Agreement between  
8 UEC and Bart’s for the Project dated December 19, 2012 (the “Subcontract”) is attached as **Exhibit**  
9 **“2”**. The Subcontract provides for Kansas law to govern the parties’ disputes. The Subcontract  
10 was based on UEC’s form subcontract. Defendant, Liberty Mutual Insurance Company  
11 (“Liberty”) is a corporate surety that provided a payment bond for the Project pursuant to 40 U.S.C.  
12 § 3131 (the “Miller Act Bond”).  
13

14 The contract amount for Bart’s work on the Project under the Subcontract was the cost of  
15 the work plus a fee of 20%, with a guaranteed maximum price of \$13,693,914. Agreed change  
16 orders between Bart’s and UEC for work on the Project increased the guaranteed maximum price  
17 under the Subcontract to \$13,864,369.  
18

19 Bart’s performed all of the work on the Project required by the Subcontract and invoiced  
20 UEC a total amount of \$13,864,369. UEC made payments to Bart’s for work on the Project  
21 totaling only \$13,743,664.48, leaving an unpaid principal balance due of \$120,704.52. In addition,  
22 Bart’s alleges design errors by United Excel Design, PC (“UED”) and impacts by Mill Creek,  
23 L.L.C. (“Mill Creek”) that caused substantial costs and damages on the Project in excess of  
24 \$800,000.  
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26 The Subcontract provides for Mediation and binding Arbitration between Bart’s and UEC  
27 regarding unresolved disputes on the Project. As a result, Bart’s and UEC have agreed to a stay  
28

1 of this action pending a conclusion of Mediation and Arbitration proceedings among Bart's, UEC  
2 and Liberty that will take place in the Kansas City, Missouri metropolitan area.

3 **II. LEGAL ARGUMENT**

4 "Courts have inherent power to stay the cases before them as a matter of controlling their  
5 own docket and calendar." *City of Henderson v. Span Sys.*, 2013 U.S. Dist. LEXIS 36129, at \*3–  
6 4, 2013 WL 1104428 (D. Nev. Mar. 15, 2013) (citing *Landis v. North American Co.*, 299 U.S.  
7 248, 254–55, 57 S.Ct. 163, 81 L.Ed. 153 (1936)). In evaluating a motion to stay, the Court  
8 considers the goal of Federal Rule of Civil Procedure 1, which provides that the Rules shall "be  
9 construed and administered to secure the just, speedy, and inexpensive determination of every  
10 action." *See Kidneigh v. Tournament One Corp.*, 2013 WL 1855764, at \*2 (D. Nev. May 1, 2013).  
11 The case law in this District makes clear that requests to stay all discovery may be granted when:  
12 (1) the pending motion is potentially dispositive; (2) the potentially dispositive motion can be  
13 decided without additional discovery; and (3) the Court has taken a "preliminary peek" at the  
14 merits of the potentially dispositive motion and is convinced that the plaintiff will be unable to  
15 state a claim for relief. *See Kor Media Group, LLC v. Green*, 294 F.R.D. 579, 581 (D. Nev. 2013).

16 In addition, the Federal Arbitration Act ("FAA") applies – as here – to transactions  
17 involving interstate commerce. 9 U.S.C. § 2. *See also Allied-Bruce Terminix Cos. v. Dobson*, 513  
18 U.S. 265, 277 (1995). The FAA further specifically provides that a court "shall on application of  
19 one of the parties stay the trial" of "any suit or proceeding" brought "upon any issue referable to  
20 arbitration under [an arbitration] agreement . . . until such arbitration has been had in accordance  
21 with the terms of the agreement." 9 U.S.C. § 3. *See also Dean Witter Reynolds, Inc. v. Byrd*, 470  
22 U.S. 213, 218, (1985).

23 The arbitration is binding and therefore is dispositive of the actions pled here. Moreover,  
24 the parties are in agreement as to proceeding through arbitration before completing this legal  
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1 action. In fact, the lawsuit may be moot following the adjudication of the parties' rights in the  
2 binding arbitration process. In addition, the Court has inherent authority to enter a stay of this  
3 action pending arbitration, regardless of the FAA. *Portland Gen. Elec. Co. v. Liberty Mut. Ins.*  
4 *Co.*, 862 F.3d 981 (9th Cir. 2017).

5 **III. CONCLUSION**

6 Plaintiff respectfully requests that this Court enter an order staying this matter for the  
7 parties to proceed with and complete the binding arbitration as contractually agreed upon.

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9  
10 DATED this 19<sup>th</sup> day of December 2018.

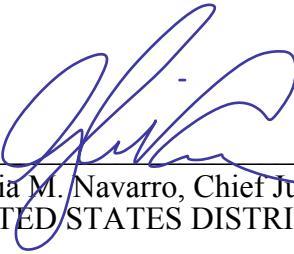
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13 **BLACK & LOBELLO**

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Rusty Graf, Esq.  
Nevada Bar No. 6322  
10777 W. Twain Ave., Suite 300  
Las Vegas, Nevada 89135  
Attorney for Plaintiff

**ORDER**

IT IS HEREBY ORDERED that the above Unopposed Motion for Stay of  
Proceedings, (ECF No. 12), is GRANTED. IT IS FURTHER ORDERED that the parties  
will provide a status report of the pending FAA dispute by Friday, March 8, 2019, and every  
forty-five (45) days thereafter.

DATED this 23 day of January, 2019.

  
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Gloria M. Navarro, Chief Judge  
UNITED STATES DISTRICT COURT

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**CERTIFICATE OF SERVICE**

I HEREBY CERTIFY THAT on the 19<sup>th</sup> day of December 2018, I served a true and correct copy of the foregoing PLAINTIFF'S MOTION TO STAY PROCEEDINGS PENDING CONCLUSION OF MEDIATION OR ARBITRATION through the Court's EM/ECF system:

  
An Employee of Black & LoBello